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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Charles E. Vance III	)	File Number EB-04-LA-133
d/b/a/ CB Candy Electronics	)	
	)	NAL/Acct. No. 200632900005
Ontario, California	)	FRN # 0014383509

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: March 22, 2006

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Charles E. Vance, III d/b/a/ CB Candy Electronics (Vance) in Ontario, California, apparently willfully and repeatedly violated Section 302(b) of the Commissions Act of 1934, as amended ("Act"),<sup>1</sup> and Sections 2.803(a)(1) and 2.815(c) of the Commission's Rules ("Rules")<sup>2</sup> by offering for sale non-certified Citizens Band ("CB") transceivers and external RF power amplifiers. We conclude, pursuant to Section 503(b) of the Act,<sup>3</sup> that Vance is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

**II. BACKGROUND**

2. On June 28, 2005, an agent from the Enforcement Bureau's Los Angeles Office visited the CB Candy Electronics website. The agent downloaded a sales catalog that displayed and offered for sale multiple makes and models of non-certificated CB transceivers, including Galaxy models DX-33, DX-66V and DX-99V, as well as the Connex 3300 model, among others.<sup>4</sup> The catalog also included numerous makes and models of external radio frequency power amplifiers, specifically Skipper 350-B, Palomar 1000, 450HD, 600HD; Red Devil 250R, 350 HD, and others. A review of the Commission's records revealed that these devices had not received an equipment authorization from the Commission.

3. On June 28, 2005, the Los Angeles Office issued a Citation to Vance for violation of Section 302(b) of the Act, and Section 2.803(a)(1) of the Commission's Rules by offering for sale, non-certified CB transceivers and Section 2.815(c) of the Commission's Rules ("Rules") by offering for sale external RF power amplifiers.<sup>5</sup> The Citation warned Vance that future violations might subject him to civil

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. §§ 2.803(a)(1), 2.815(c).

<sup>3</sup> 47 U.S.C. § 502(b).

<sup>4</sup> See *Pilot Travel Centers*, 19 FCC Rcd 23113 (2004), *Hightech CB Shop*, 20 FCC Rcd 12514 (EB 2005).

<sup>5</sup> Citation to Charles E. Vance, III d/b/a/ CB Candy Electronics, released June 28, 2005 ("Citation").

monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,<sup>6</sup> seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.<sup>7</sup>

4. In a response dated July 21, 2005, counsel for Vance disputed “all legal and factual contentions set forth in the citation” and stated that the transceivers listed in the Citation were legal to sell. The response did not address the marketing of external power amplifiers but stated the expectation that the Citation would be withdrawn within 14 days. The Los Angeles Office did not withdraw or otherwise cancel the Citation within the 14 day period set forth by counsel for Vance.

5. On September 6, 2005, and again on February 3, 2006, an agent from the Los Angeles Office again visited the CB Candy Electronics website. The agent downloaded the identical catalog as found on the website on June 28, 2005. All of the non-certified CB transceivers and external RF power amplifiers were still being offered for sale.

### **III. DISCUSSION**

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

7. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”<sup>10</sup> Section 2.803(a)(1) of the Rules provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission . . . .”<sup>11</sup> Section 2.815(c) of the Rules provides that “[n]o person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency below 144 MHz unless the device has received a grant of type acceptance . . . .”<sup>12</sup>

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<sup>6</sup> See 47 C.F.R. § 1.80(b)(3).

<sup>7</sup> See 47 C.F.R. §§ 501, 503(b), 510.

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act. . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>10</sup> 47 U.S.C. § 302a(b).

<sup>11</sup> 47 C.F.R. § 2.803(a)(1).

<sup>12</sup> 47 C.F.R. § 2.815(c).

8. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.<sup>13</sup> Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”<sup>14</sup> Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).<sup>15</sup> Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.<sup>16</sup> Additionally, the Commission’s Office of Engineering and Technology (“OET”) has evaluated the models at issue here and has determined that these devices could easily be altered for use as CB transceivers.

9. On June 28, 2005, the Los Angeles Office issued a Citation to Vance concerning his marketing of non-certified CB transceivers and external RF power amplifiers. As of February 3, 2006, Vance continued to market non-certified CB transceivers and RF amplifiers. Vance was aware the devices he was offering for sale were not certified, therefore, his violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Vance apparently willfully and repeatedly violated Section 302(b) of the Act and Sections 2.803(a)(1) and 2.815(c) of the Rules by offering for sale non-certified CB transceivers and an non-certified external RF power amplifiers.

10. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”),<sup>17</sup> and Section 1.80 of the Rules,<sup>18</sup> the base forfeiture amount for marketing unauthorized equipment is \$7,000 per violation.<sup>19</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>20</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we find that Vance offered for sale non-certified CB transceivers, in violation of Section 2.803(a)(1), and non-certified external RF power amplifiers, in violation of Section 2.815(c). We therefore conclude that that Vance is apparently liable for a \$14,000 forfeiture.

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<sup>13</sup> See 47 C.F.R. §§ 2.907, 2.927(a).

<sup>14</sup> 47 C.F.R. § 95.603(c).

<sup>15</sup> 47 C.F.R. § 95.655(a).

<sup>16</sup> Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

<sup>17</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>18</sup> 47 C.F.R. § 1.80.

<sup>19</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>20</sup> 47 U.S.C. § 503(b)(2)(D).

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Charles E. Vance III d/b/a/ CB Candy Electronics is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) and 2.815(c) of the Rules.<sup>21</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Charles E. Vance III d/b/a/ CB Candy Electronics **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker RD., Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>22</sup>

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<sup>21</sup> 47 U.S.C. §§ 302a(b), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 2.803(a)(1), 2.815(c).

<sup>22</sup> See 47 C.F.R. § 1.1914.

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17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Charles E. Vance III at his residence address, and to CB Candy Electronics at the address listed on the website, and to their attorney, Michael C. Olson., Law Office of Michael C. Olson, 4400 MacArthur Blvd., Suite 230, Newport Beach, CA 92660.

### **FEDERAL COMMUNICATIONS COMMISSION**

Catherine Deaton  
District Director  
Los Angeles District Office  
Western Region  
Enforcement Bureau